IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9158 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ TARACHAND MOTVANI SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 1.7.2000, Annexure-A, in respect of the petitioner passed by respondent no. 2 in exercise of his

powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is a 'bootlegger' within the meaning of sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on one prohibition case lodged in Prohibition Station (North Region) on 29.6.2000. The detaining authority also placed reliance on the statements of two anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, the detaining authority verified the statements on 30.6.2000 and on the very next day i.e. on 1.7.2000 passed the order of detention, which is challenged in this petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main petition controverting the grounds of attack mentioned in memo of petition.

4. Mr HR Prajapti learned advocate for the petitioner has argued that looking to the dates of statements, date of verification of statements and date of passing of order of detention, it is crystal clear that the detaining authority has wrongly claimed the privilege under sec. 9(2) of the Act. He has cited the authority of Kalidas Chandubhai Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. Looking to the dates of statements, dates of verification and date of the order of the order of detention, the present case is squarely falls within the four corners of the case of Kalidas Chandubhai Kahar (supra).

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 1.7.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceedings. Rule is made absolute. Direct service permitted.

(H.H. MEHTA, J.)
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